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Parkwood Developmental Center, Inc. and Templeton School of Special Education, Inc., as Joint Employers and United Food and Commercial Workers Union Local 1996, AFL-CIO, CLC. Case 12-CA-19239

March 30, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
BRAME

Pursuant to a charge filed on January 12, 1998, the General Counsel of the National Labor Relations Board issued a complaint on January 26, 1998, alleging that the Respondents have violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 12-RC-8055. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondents filed an answer admitting in part and denying in part the allegations in the complaint.

On February 23, 1998, the General Counsel filed a Motion for Summary Judgment. On February 27, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondents admit their refusal to bargain, but attacks the validity of the certification on the basis of their objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondents do not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor do they allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondents have not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

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On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondents, Georgia corporations, with an office and place of business in Valdosta, Georgia, have been engaged in the business of operating an intermediate care facility for the mentally retarded and a special education institute. At all material times, Respondent Parkwood Developmental Center, Inc. and Templeton School of Special Education, Inc., have been joint employers of the employees in the unit described below. During the 12-month period preceding issuance of the complaint, the Respondents, in conducting their business operations, derived gross revenues in excess of \$100,000 and purchased and received at their Valdosta, Georgia facility goods and materials valued in excess of \$5000 directly from points located outside the State of Georgia. We find that the Respondents are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held April 10, 1997, the Union was certified on November 7, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees of the Respondents including custodians, housekeeping aides, unit housekeepers, laundry employees, maintenance employees, car/bus drivers, horticulturists, cooks, assistant cooks, dietary aides, dietary AM/PM janitors, social work technicians, direct care staff employees, direct care team leaders, medication nurses, treatment nurses, infection control nurses, physical health records nurses, transportation and appointment specialists, behavior program aides, activities center staff, behavior program aide/data specialists, transportation aides, sensorimotor therapists, and teacher aides, but not including receptionist, secretary to the administrator, purchasing coordinator, accounting/bookkeeper, clerical assistant for Templeton School, QMR records auditor, clinical records staff, computer data and program specialist, computer specialist and assistant to Personnel Director, professional employees, managerial employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since November 24, 1997, the Union has requested the Respondents to bargain, and, since that date, the Respondents have refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after November 24, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order them to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondents begin to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondents, Parkwood Developmental Center, Inc. and Templeton School of Special Education, Inc., Valdosta, Georgia, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Union Local 1996, AFL-CIO, CLC as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employ-

ment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees of the Respondents including custodians, house-keeping aides, unit housekeepers, laundry employees, maintenance employees, car/bus drivers, horticulturists, cooks, assistant cooks, dietary aides, dietary AM/PM janitors, social work technicians, direct care staff employees, direct care team leaders, medication nurses, treatment nurses, infection control nurses, physical health records nurses, transportation and appointment specialists, behavior program aides, activities center staff, behavior program aide/data specialists, transportation aides, sensorimotor therapists, and teacher aides, but not including receptionist, secretary to the administrator, purchasing coordinator, accounting/bookkeeper, clerical assistant for Templeton School, QMR records auditor, clinical records staff, computer data and program specialist, computer specialist and assistant to Personnel Director, professional employees, managerial employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Valdosta, Georgia, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 12 after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since November 24, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. March 30, 1998

William B. Gould IV, Chairman

Sarah M. Fox, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Food and Commercial Workers Union Local 1996, AFL-CIO, CLC as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time employees of Parkwood Developmental Center, Inc. and Templeton School of Special Education, Inc. including custodians, housekeeping aides, unit housekeepers, laundry employees, maintenance employees, car/bus drivers, horticulturists, cooks, assistant cooks, dietary aides, dietary AM/PM janitors, social work technicians, direct care staff employees, direct care team leaders, medication nurses, treatment nurses, infection control nurses, physical health records nurses, transportation and appointment specialists, behavior program aides, activities center staff, behavior program aide/data specialists, transportation aides, sensorimotor therapists, and teacher aides, but not including receptionist, secretary to the administrator, purchasing coordinator, accounting/bookkeeper, clerical assistant for Templeton School, QMR records auditor, clinical records staff, computer data and program specialist, computer specialist and assistant to Personnel Director, professional employees, managerial employees, guards and supervisors as defined in the Act.

PARKWOOD DEVELOPMENTAL CENTER,
INC. AND TEMPLETON SCHOOL OF SPECIAL
EDUCATION, INC.